

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LEONARD COOK,

Plaintiff,

v.

DEPUTY SCOTT PRIEBE,

Defendant.

ORDER

08-cv-668-slc

Plaintiff is proceeding on his claim that defendant Deputy Scott Priebe violated his Fourth or Fourteenth Amendment rights by using excessive force when arresting him. He is also proceeding on his state law claims for negligence and excessive force.

Now before the court is defendant's motion to dismiss plaintiff's complaint for improper venue pursuant to Fed. R. Civ. P. 12(b)(3) or in the alternative to transfer the case to the United States District Court for the Eastern District of Wisconsin pursuant to 28 U.S.C. §1406(a). Plaintiff has no objection to defendant's alternative request to transfer the case.

Under 28 U.S.C. § 1391(b), a civil rights action "may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all

defendants reside in the same state, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought." Defendant contends that venue is improper in the Western District of Wisconsin because the claim arose during a January 30, 2006 arrest of plaintiff in Green Bay, Wisconsin, which is located in the Eastern District of Wisconsin. Although defendant provides no affidavit that he resides only in the Eastern District of Wisconsin, plaintiff does not dispute that fact.

Moreover, as the parties agree, 28 U.S.C. § 1406(a) authorizes a federal court in which venue is improper to transfer a case to another court where venue is proper if the transfer would further the interests of justice. Particularly when a plaintiff is proceeding pro se, transfer to a district court in which venue is proper is in the interest of justice. Therefore this case will be transferred to the Eastern District of Wisconsin.

ORDER

IT IS ORDERED that

1. Defendants' motion to dismiss plaintiff's complaint for improper venue, dkt. # 9, is DENIED.

2. Defendant's alternative motion to transfer venue, dkt. #9, is GRANTED.

3. This case is transferred to the United States District Court for the Eastern District of Wisconsin. The clerk of court is directed to transmit the file to the United States District Court for the Eastern District of Wisconsin.

Entered this 17th day of February, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge